

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8247 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
No
2. To be referred to the Reporter or not? No :
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
No
5. Whether it is to be circulated to the Civil Judge? No :

JAYSUKHBHAI DAHYABHAI GAJJAR

Versus

STATE OF GUJARAT

Appearance:

MR VC DESAI for Petitioner

Ms.Harsha Devani, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 27/10/1999

ORAL JUDGEMENT

1. The prayer of the petitioner in this writ petition is for quashing the order dated 14.3.1984 of the Competent Authority under the Urban Land (Ceiling & Regulation) Act, Annexure : L, Order dated 2.8.1996, Annexure : N, rejecting Review Application by the Competent Authority and Annexure : K order of the Deputy Collector dated 29.3.1996.

2. Brief facts necessary for disposal of this petition are as under :

The Competent Authority under the Urban Land (Ceiling & Regulation) Act, through order dated 14.3.1984 contained in Annexure : L to this writ petition, after considering form No.1, under Section 6(1) of the Act and further considering the fact that despite notice none appeared from the side of the land holder to file and raise any objection, declared 1092 sq.mtrs. land out of final plot No.123 of Survey No.1095/2 which is relevant for the purpose of this petition. The competent Authority in the said order declared 2637 sq.mtrs. land from Final plot No.127, but this is not relevant for the purpose of this petition. Review Application was filed by the petitioner against this order which was rejected by the competent Authority on 2.8.1996 vide Annexure : N to the writ petition. Annexure : A to the petition shows that the petitioner obtained Certificate under Section 26 of the Gujarat Town Planning and Urban Development Act, 1976 and also necessary certificate under Section 49 of the said Act so also Rajachitthi under Chapter : XII of the B.P.M.C. Act, 1949 with certain conditions on 19.10.1989. Constructions were raised in accordance with this permission by the petitioner. However, Annexure : K shows that the Deputy Collector (N.A.), Ahmedabad considered order of the competent Authority under the ULC Act referred to earlier and with reference to that order came to the conclusion that out of final plot No.123 1092 sq.mtrs. land was declared surplus by the competent Authority, out of total area of 1711 sq.mtrs. In this way according to the Deputy Collector (N.A.) the petitioner can be said to be in possession of only 619 sq.mtrs. of land in his possession, but it was not definite and ascertainable as to how much land is owned and possessed by the petitioner and where. Accordingly, revised plan was insisted upon by the Deputy Collector from the petitioner. This order is under challenge.

3. After repeal of the ULC Act in Gujarat with effect from 30.3.1999 the proceedings before the competent Authority shall abate in cases where possession of the surplus land has not been taken over by the State Government. Today communication has been filed by the learned A.G.P. indicating that the possession has not been taken by the State Government of the surplus land so declared by the competent Authority in its order dated 14.3.1984. If the possession has not been taken over by the State Government then the proceedings before the competent Authority cannot be saved under Section 3 of

the Repeal Act. Section 4 of the Repeal Act will then straight-way apply and its effect will be that the proceedings and actions under the ULC Act where the possession of surplus land was not taken over by the State Government shall abate. In view of this legal position and consequence of Repeal Act the order of the competent Authority contained in Annexures : L & N will become non-existent and it will be deemed that there has been no declaration of surplus land by the competent Authority.

4. As a consequence thereof Annexures : L & N having become infructuous need not be quashed.

5. So far as Annexure : K is concerned, learned Counsel for the petitioner has urged that since requisite permission was already obtained by the petitioner under the Gujarat Town Planning & Urban Development Act, as well as Rajachithi under the provisions of B.P.M.C. Act on 19.10.1989 no further permission in the nature of N.A. Permission is required and the calculation of land in possession of the petitioner by the Deputy Collector in Annexure : K is also incorrect and erroneous. Reliance has also been placed upon the case of KARIMBHAI KALLU v/s. STATE OF GUJARAT, reported in 1996 (1) G.L.H. 20. It was laid down in this case that once development permission is obtained under Section 29 of the Gujarat Town Planning & Urban Development Act, 1976 then as per provision of Section 117 no other permission is required under any other law including non-agricultural permission under Sec. 65 of the Bombay Land Revenue Code. This Judgment was delivered on 28.9.1995. Learned A.G.P. has pointed out that Section 117 (a) was deleted with effect from 9.3.1999. In view of this deletion of Section 117(a) the above view of this Court does not hold good any more. Annexure : K to the writ petition shows that this order was passed in connection with seeking N.A. permission for construction made without permission over 870 sq.mtrs. land of final plot No.123 of town planning Scheme No.12. The calculation of surplus land or the land in possession of the petitioner made in Annexure : K is also erroneous in view of the findings given above that all actions under the ULC Act abate after repeal of the ULC Act in view of Section 4 of the Repeal Act. Consequently it will be deemed that the entire land was in possession of the petitioner and if he made construction thereon with permission under the provisions of the B.P.M.C. Act, he has yet to apply for N.A. Permission under Section 65 of the Bombay Land Revenue Code. Since Application to this effect has already been made by the petitioner before the Deputy Collector

(N.A.), Ahmedabad, the said application will now be decided by the Deputy Collector (N.A.) ignoring declaration of surplus land by the Competent Authority on 14.3.1984 and he will proceed to consider grant or refusal of N.A. permission as if the aforesaid order of Competent Authority dated 14.3.1984 did not exist at any time.

6. With above observation the order contained in Annexure : K to the writ petition is hereby quashed. The Deputy Collector (N.A.), Ahmedabad shall now proceed to consider application of the petitioner for grant of N.A. permission in respect of 870 sq.mtrs. land in accordance with law. The writ petition is accordingly disposed of with no order as to costs.

sd/-

Date : October 27, 1999 (D. C. Srivastava, J.)

sas